

APPENDIX L

STORMWATER

TITLE 38

CHAPTER 3

PROTECTION AND IMPROVEMENT OF WATERS

SUBCHAPTER I

ENVIRONMENTAL PROTECTION BOARD

Article 2

POLLUTION CONTROL

38 § 420-C. Erosion and sedimentation control

A person who conducts, or causes to be conducted, an activity that involves filling, displacing or exposing soil or other earthen materials shall take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource as defined in section 480-B. Erosion control measures must be in place before the activity begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely temporary and permanent stabilization measures must be taken and the site must be maintained to prevent unreasonable erosion and sedimentation.

This section applies to a project or any portion of a project located within an organized area of this State. This section does not apply to agricultural fields. Forest management activities, including associated road construction or maintenance, conducted in accordance with applicable standards of the Maine Land Use Regulation Commission, are deemed to comply with this section. This section may not be construed to limit a municipality's authority under home rule to adopt ordinances containing stricter standards than those contained in this section.

38 § 420-D. Storm water management

A person may not construct, or cause to be constructed, a project that includes one acre or more of disturbed area without prior approval from the department. A person proposing a project shall apply to the department for a permit using an application provided by the department and may not begin construction until approval is received. This section applies to a project or any portion of a project that is located within an organized area of this State.

1. Standards. The department shall adopt rules specifying quantity and quality standards for storm water. Storm water quality standards for projects with 3 acres or less of impervious surface may address phosphorus, nitrates and suspended solids but may not directly address other dissolved or hazardous materials unless infiltration is proposed.

2. Review. If the applicant is able to meet the standards for storm water using solely vegetative means, the department shall review the application within 45 calendar days. If structural means are used to meet those standards, the department shall review the application within 90 calendar days. The review period begins upon receipt of a complete application and may be extended pursuant to section 344-B or if a joint order is required pursuant to subsection 5. The department may request additional information necessary to determine whether the standards of this section are met. The application is deemed approved if the department does not notify the applicant within the applicable review period.

The department may allow a municipality or a quasi-municipal organization, such as a watershed management district, to substitute a management system for storm water approved by the department for the permit

requirement applicable to projects in a designated area of the municipality. The municipality or quasi-municipality may elect to have this substitution take effect at the time the system is approved by the department, or at the time the system is completed as provided in an implementation schedule approved by the department.

3. Watersheds of bodies of water most at risk. The department shall establish by rule a list of watersheds of bodies of water most at risk from new development. In regard to lakes, the list must include, but is not limited to, public water supply lakes and lakes identified by the department as in violation of class GPA water quality standards or as particularly sensitive to eutrophication based on current water quality, potential for internal recycling of phosphorus, potential as a cold water fishery, volume and flushing rate or projected growth rate in a watershed. The department shall review and update the list as necessary. A municipality within the watershed of a body of water most at risk may petition the department to have the body of water added to or dropped from the list.

4. Sensitive or threatened regions or watersheds. The department shall establish by rule a list of sensitive or threatened regions or watersheds. These areas include the watersheds of surface waters that:

- A. Are susceptible to degradation of water quality or fisheries because of the cumulative effect of reasonably foreseeable levels of development activity within the watershed of the affected surface waters; and
- B. Are not classified as "watersheds of bodies most at risk" under subsection 3.

5. Relationship to other laws. A storm water permit pursuant to this section is not required for a project requiring review by the department pursuant to any of the following provisions but the project may be required to meet standards for management of storm water adopted pursuant to this section: article 6, site location of development; article 7, performance standards for excavations for borrow, clay, topsoil or silt; article 8-A, performance standards for quarries; and sections 631 to 636, permits for hydropower projects. When a project requires a storm water permit and requires review pursuant to article 5-A, the department shall issue a joint order unless the permit required pursuant to article 5-A is a permit-by-rule or general permit, or separate orders are requested by the applicant and approved by the department.

6. Urbanizing areas. The department shall work with the State Planning Office to identify urban bodies of water most at risk and incorporate model ordinances protective of these bodies of water into assistance provided to local governments.

7. Exemptions. The following exemptions apply.

- A. Forest management activities, including associated road construction or maintenance, do not require review pursuant to this section if any road construction is used primarily for forest management activities and is not used primarily to access development.
- B. Disturbing areas for the purpose of normal farming activities, such as clearing of vegetation, plowing, seeding, cultivating, minor drainage and harvesting, does not require review pursuant to this section.
- C. If the commissioner determines that a municipality's ordinance meets or exceeds the provisions of this section and that the municipality has the resources to enforce that ordinance, the commissioner shall exempt any project within that municipality. The department shall maintain a list of municipalities meeting these criteria and update this list at least every 2 years. If a municipality on the list no longer meets these criteria, it must be removed from the list. A project constructed after a municipality is removed from the list must obtain approval pursuant to this section.

D. [repealed]

E. Impervious and disturbed areas associated with construction or expansion of a single-family, detached residence on a parcel do not require review pursuant to this section.

F. Waste facilities regulated by the department under section 1310-N, 1319-R or 1319-X do not require review under this section. This exemption applies to new facilities, modifications of facilities, transfers of facilities and relicensing of facilities.

G. Projects involving roads, railroads and associated facilities conducted by or under the supervision of the Department of Transportation or the Maine Turnpike Authority, do not require review under this section as long as the projects are constructed pursuant to storm water quality and quantity standards set forth in a memorandum of agreement between the department and the conducting or supervising agency and the project does not require review under article 6. A memorandum of agreement described in this paragraph must be updated whenever the rules concerning storm water management adopted by the department are finalized or updated.

8. Enforcement. Any activity that takes place contrary to the provisions of a valid permit issued under this article or without a permit having been issued for that activity is a violation of this article. Each day of a violation is a separate offense. A finding that any such violation has occurred is prima facie evidence that the activity was performed or caused to be performed by the owner of the property where the violation occurred. Prior to July 1, 1998, the department may not seek to impose civil or criminal penalties for a violation of this section against any person who has made a good faith effort to comply.

9. Rules. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

10. Fees. [repealed]

11. Compensation fee. The department may establish a nonpoint source reduction program to allow an applicant to pay a compensation fee in lieu of meeting certain requirements, as provided in this subsection.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

A. The department may allow an applicant with a project in the direct watershed of a lake to address certain on-site phosphorus reduction requirements through payment of a compensation fee as provided in this paragraph. The commissioner shall determine the appropriate compensation fee for each project. The compensation fee must be paid either into a compensation fund or to an organization authorized by the department and must be a condition of the permit.

(1) The department may establish a storm water compensation fund for the purpose of receiving compensation fees, grants and other related income. The fund must be a nonlapsing fund dedicated to payment of the costs and related expenses of compensation projects. Income received under this subsection must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by statute. Interest on these investments must be credited to the fund. The department may make payments from the fund consistent with the purpose of the fund.

(2) The department may enter into a written agreement with a public, quasi-public or private, nonprofit organization for purposes of receiving compensation fees and

implementing compensation projects. If the authorized agency is a state agency other than the department, it shall establish a fund meeting the requirements specified in subparagraph (1). The authorized organization shall maintain records of expenditures and provide an annual summary report to the department. If the organization does not perform in accordance with this section or with the requirements of the written agreement, the department may revoke the organization's authority to conduct activities in accordance with this paragraph. If an organization's authorization is revoked, any remaining funds must be provided to the department.

(3) The commissioner may set a fee rate of no more than \$10,000 per pound of available phosphorus, except that the commissioner may set a rate up to \$20,000 per pound for a project located in the direct watershed of a severely blooming lake.

(4) Except in an urbanized part of a designated growth area, best management practices must be incorporated on site that, by design, will reduce phosphorus export by at least 50%, and a phosphorus compensation fee must be paid to address the remaining phosphorus reduction required to meet the parcel's phosphorus allocation. In an urbanized part of a designated growth area, an applicant may pay a phosphorus compensation fee in lieu of part or all of the on-site phosphorus reduction requirement. The commissioner shall identify urbanized parts of designated growth areas in the direct watersheds of lakes most at risk, in consultation with the State Planning Office.

(5) Projects funded through compensation fees as provided in this paragraph must be located in the same watershed as the project with respect to which the compensation fee is paid.

B. The department may allow an applicant with a project within the direct watershed of a coastal wetland, river, stream or brook to address all or part of the storm water quality standards for the project through payment of a compensation fee as provided by rules adopted pursuant to this subsection.

12. Fees. An applicant for a permit under this section shall pay a fee to the department as follows.

A. If structural means of storm water control are used, the fee is \$500 for the first acre of disturbed area, plus \$250 for each additional whole acre of disturbed area.

B. If solely vegetative means of storm water control are used, the fee is \$250 for the first acre of disturbed area, plus \$125 for each additional whole acre of disturbed area.

C. When a permit by rule is required as provided by rules adopted by the department, the fee is \$55.

If a project described in paragraph A or B is reviewed and approved by a professional engineer at a soil and water conservation district office that has a memorandum of understanding with the department concerning review of projects pursuant to this section, the fee is reduced to \$100 for the first acre of disturbed area, plus \$50 for each additional whole acre of disturbed area.

13. Significant existing sources. The department may require a person owning or operating a significant existing source of storm water to implement a storm water management system. The owner or operator shall obtain approval from the department pursuant to this subsection for the storm water management system.

For the purposes of this subsection, "significant existing source" means a significant existing source of storm water pollution based on quantity or quality standards for storm water from a developed area that was in existence prior to July 1, 1997 and is located in the direct watershed of a waterbody that is

impaired due to urban runoff. The department shall identify significant existing sources as provided in this subsection.

A. The department shall develop a total maximum daily load for the watershed of a waterbody impaired due to urban runoff prior to designating significant existing sources within the watershed.

B. The department shall adopt rules prior to requiring that an owner or operator of a significant existing source within the direct watershed of a specific waterbody obtain approval of a storm water management system. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The rules must include, but are not limited to, the following:

- (1) The name of or other means of identifying the waterbody that is impaired due to urban runoff;
- (2) A list of significant existing sources or a description of the types or classes of significant existing sources;
- (3) A date or schedule indicating when approvals must be obtained; and
- (4) Storm water quantity and quality standards for storm water management systems.

C. The owner or operator of a site designated as a significant existing source shall apply to the department for approval of a storm water management system.

D. "Significant existing source" does not include:

- (1) Types of sources or activities described in subsection 7;
- (2) The developed area of a facility required to meet ongoing storm water management standards pursuant to a storm water general or individual permit issued pursuant to section 413; and
- (3) A municipal storm water conveyance system unless the storm water pollution originates with the conveyance system.

This section may not be construed to limit a municipality's authority under home rule to adopt ordinances containing stricter standards than those contained in this section.

WATERBODIES MOST AT RISK FROM NEW DEVELOPMENT, AND SENSITIVE OR THREATENED REGIONS OR WATERSHEDS

Lakes Most at Risk from Development

(x) = Severely Blooming

LAKE	TOWN	LAKE	TOWN
ADAMS POND	BOOTHBAY	DUTTON POND	CHINA ALBION
ADAMS POND	NEWFIELD	EAGLE LAKE	BAR HARBOR
ADAMS POND	BRIDGTON	EAST POND	SMITHFIELD
ALLEN POND	GREENE	ECHO LAKE	PRESQUE ISLE
ANASAGUNTICOOK LAKE	CANTON	ELL POND	SANFORD
ANDERSON POND	AUGUSTA	ESTES LAKE	SANFORD
ANNABESSACOOK LAKE (X)	WINTHROP	ETNA POND	STETSON
BARTLETT POND	WATERBORO	FAIRBANKS POND	MANCHESTER
BAUNEG BEG POND	SANFORD	FLOODS POND	OTIS
BAY OF NAPLES	NAPLES	FOLLY POND	VINALHAVEN
BEAVER POND	BRIDGTON	FOREST LAKE	WINDHAM
BERRY POND	WINTHROP	FRESH POND	NORTH HAVEN
BERRY POND	GREENE	GARDINER POND	WISCASSET
BIRCH HARBOR POND	WINTER HARBOR	GARLAND POND	GARLAND
BLACK POND	SWEDEN	GRANNY KENT POND	SHAPLEIGH
BONNY EAGLE LAKE	BUXTON	GRASSY POND	ROCKPORT
BOULTER POND	YORK	GREAT POND	BELGRADE & ROME
BOYD POND	LIMINGTON	GREAT POND	CAPE ELIZABETH
BRANCH LAKE	ELLSWORTH	GREELEY POND	AUGUSTA
BRANCH POND	CHINA	GREEN POND	OXFORD
BRETTUNS POND	LIVERMORE	HALEY POND	RANGELEY
BUKER POND	LITCHFIELD	HALF MOON POND	ST ALBANS
BUNGANUT POND	LYMAN	HALL POND	PARIS
BURNTLAND POND	STONINGTON	HANCOCK POND	EMBDEN
CARLTON POND	WINTHROP	HATCASE POND	DEDHAM
CHAFFIN POND	WINDHAM	HERMON POND	HERMON
CHASES POND	YORK	HIGHLAND LAKE	BRIDGTON
CHICKAWAUKIE POND	ROCKPORT	HIGHLAND LAKE	WINDHAM
CHINA LAKE	CHINA	HOBBS (LT PENNESSE.)	NORWAY
CITY POND	SANDY RIVER PLANTATION	HOGAN POND	OXFORD
		HOLBROOK POND	HOLDEN
COBBOSSECONTEE LAKE (X)	WINTHROP	HOLLAND POND	LIMERICK
COCHNEWAGON LAKE	MONMOUTH	HORNE POND	LIMINGTON
COFFEE POND	CASCO	HOSMER POND	CAMDEN
COLD RAIN POND	NAPLES	HUTCHINSON POND	MANCHESTER
CRAWFORD POND	WARREN	INGALLS POND	BRIDGTON
CRESCENT POND	RAYMOND	INGHAM POND	MOUNT VERNON
CRYSTAL LAKE	GRAY	ISINGLASS POND	LIMINGTON
CRYSTAL POND	TURNER	JACOB BUCK POND	BUCKSPORT
DAM POND	AUGUSTA	JIMMIE (JAMIES) POND	MANCHESTER
DAMARISCOTTA LAKE, MIDDLE AND SOUTH BASINS	NOBLEBORO	JIMMY POND	LITCHFIELD
		JORDAN POND	MOUNT DESERT
DAVIS POND	HOLDEN	KENNEBUNK POND	LYMAN
DEER POND	HOLLIS	KEZAR POND	WINTHROP
DEERING POND	SANFORD	KILLICK POND	HOLLIS
DESERT POND	MOUNT VERNON	KNICKERBOCKER POND	BOOTHBAY
DEXTER POND	WINTHROP	KNIGHT POND	SOUTH BERWICK
DODGE POND	RANGELEY	LAKE AUBURN	AUBURN
DUCKPUDDLE POND	WALDOBORO	LAKE GEORGE	SKOWHEGAN
DUMPLING POND	CASCO	LAKE WOOD	BAR HARBOR

LAKE	TOWN	LAKE	TOWN
LILLY POND	ROCKPORT	NUBBLE POND	RAYMOND
LILY POND	SIDNEY	OAKS POND	SKOWHEGAN
LILY POND	NEW GLOUCESTER	OTTER POND	BRIDGTON
LITTLE COBBOSSEE	WINTHROP	OTTER PONDS #2	STANDISH
LITTLE DUCK POND	WINDHAM	PANTHER POND	RAYMOND
LITTLE MEDOMAK POND	WALDOBORO	PARADISE POND	DAMARISCOTTA
LITTLE OSSIPEE	WATERBORO	PARKER POND	CASCO
LITTLE POND	DAMARISCOTTA	PARKER POND	JAY
LITTLE PURGATORY POND	MONMOUTH	PARKER POND	LYMAN
LITTLE SABATTUS	GREENE	PATTEE POND	WINSLOW
LITTLE SEBAGO LAKE	WINDHAM	PATTEN POND	HAMPDEN
LITTLE TOGUS POND	AUGUSTA	PEMAQUID POND	WALDOBORO
LITTLE WATCHIC POND	STANDISH	PENNESSEEWASSEE	NORWAY
LITTLE WILSON POND	TURNER	PETINGILL POND	WINDHAM
LONG LAKE	BRIDGTON	PLEASANT POND	TURNER
LONG POND	MOUNT DESERT	PLEASANT POND (X)	RICHMOND
LONG POND	BUCKSPORT	POVERTY POND	NEWFIELD
LONG POND	SULLIVAN	QUIMBY POND	RANGELEY
LOON POND	SABATTUS	RAYMOND POND	RAYMOND
LOON POND	LITCHFIELD	RICH MILL POND	STANDISH
LOVEJOY POND	ALBION	ROBERTS WADLEY POND	LYMAN
LOWER AND UPPER PONDS	SKOWHEGAN	ROCKY POND	ROCKPORT
LOWER HADLOCK POND	MOUNT DESERT	ROUND POND	RANGELEY
LOWER NARROWS POND	WINTHROP	RUNAROUND POND	DURHAM
LOWER RANGE POND	POLAND	SABATTUS POND (X)	GREENE
MACES POND	ROCKPORT	SABBATHDAY LAKE	NEW GLOUCESTER
MANSFIELD POND	HOPE	SALMON L (ELLIS P)	BELGRADE
MARANACOOK LAKE	WINTHROP	SALMON STREAM POND	GUILFORD
MARSHALL POND	OXFORD	SAND POND	MONMOUTH
MCGRATH POND	OAKLAND	SAND POND	LIMINGTON
MEDOMAK POND	WALDOBORO	SANDY BOTTOM POND	TURNER
MEGUNTICOOK LAKE	LINCOLNVILLE	SANDY POND	FREEDOM
MIDDLE BRANCH POND	ALFRED	SAWYER POND	GREENVILLE
MIDDLE RANGE POND	POLAND	SCITUATE POND	YORK
MIRROR LAKE	ROCKPORT	SEBAGO LAKE	SEBAGO
MOODY POND	LINCOLNVILLE	SEBASTICOOK LAKE	NEWPORT
MOODY POND	WATERBORO	SECOND POND	DEDHAM
MOOSE HILL POND	LIVERMORE FALLS	SEWALL POND	ARROWSIC
MOOSE POND	OTISFIELD	SHAKER POND	ALFRED
MOUNT BLUE POND	AVON	SHERMAN LAKE	NEWCASTLE
MOUSAM LAKE	SHAPLEIGH	SHY BEAVER POND	SHAPLEIGH
MUD POND	WINSLOW	SILVER LAKE	BUCKSPORT
MUD POND	CHINA	SPECTACLE POND	VASSALBORO
MUD POND	WINDSOR	STARBIRD POND	HARTLAND
MUD POND	OXFORD	SWAN POND	LYMAN
MURDOCK POND	BERWICK	SWETTS POND	ORRINGTON
NEQUASSET POND	WOOLWICH	SYMMES POND	NEWFIELD
NICHOLS POND	SWANVILLE	TAYLOR POND	AUBURN
NO NAME POND	LEWISTON	THOMAS POND	CASCO
NOKOMIS POND	NEWPORT	THOMPSON LAKE	OXFORD
NORTH POND	NORWAY	THREECORNERED POND	AUGUSTA
NORTH POND	SUMNER	THREEMILE POND (X)	WINDSOR
NORTH POND	SMITHFIELD	TOGUS POND	AUGUSTA
NORTON POND	LINCOLNVILLE	TOLMAN POND	AUGUSTA
NOTCHED POND	RAYMOND	TOOTHAKER POND	PHILLIPS

LAKE	TOWN
TRAVEL POND	JEFFERSON
TRICKEY POND	NAPLES
TRIPP POND	POLAND
TYLER POND	MANCHESTER
UNITY POND	UNITY
UPPER NARROWS POND	WINTHROP
UPPER RANGE POND	POLAND
WADLEY POND	LYMAN
WARD POND	SIDNEY
WARDS POND	LIMINGTON
WARREN POND	SOUTH BERWICK
WASSOOKEAG LAKE	DEXTER
WATCHIC POND	STANDISH
WEBBER POND (X)	VASSALBORO
WEST GARLAND POND	GARLAND
WEST HARBOR POND	BOOTHBAY HARBOR
WHITES POND	PALMYRA
WHITNEY POND	OXFORD
WHITTIER POND	ROME
WILEY POND	BOOTHBAY
WILSON POND	WAYNE
WOOD POND	BRIDGTON
WOODBURY POND	MONMOUTH
WORTHLEY POND	POLAND
YORK POND	ELIOT
YOUNGS LAKE	WESTFIELD

(1) Rivers, Streams or Brooks Most at Risk from Development

Waterbody	Municipality or Area Served by Public Water Supply
Chapman Brook	Bethel
Petite Brook	St. Francis

(2) Sensitive or threatened regions or watersheds

Stoney Brook	Andover
Salmons Falls River	Berwick
Saco River	Biddeford-Saco Area
Aroostook River	Caribou
Aunt Hanna Brook	Dixfield
Pattee Brook	Fort Fairfield
Branch Brook	Kennebunk, Kennebunkport, Wells
Silver Spring Brook	Limestone
Limestone Stream	Limestone
Little Madawaska River	U.S. Air Force -- Loring
Sebec River	Milo
St. John River	Madawaska
Presque Isle Stream	Presque
Kennebec River	Skowhegan
Quarry Hill Brook	Waldoboro

Coastal Wetlands Most at Risk from New Development

Small Estuaries, Tidal Rivers, and Bays

Spruce Creek (All)

Sections of Kittery and Eliot which are within the watershed of the tidal and freshwater segments of Spruce Creek inland of the Rte. 103 bridge between Kittery and Kittery Point.

Ogunquit River (All)

The sections of Ogunquit, Wells, York, and South Berwick which are encompassed within the watershed of the tidal and freshwater segments of the Ogunquit River and its tributaries inland from the mouth of the Ogunquit Estuary.

Scarboro Estuary System (All)

The sections of Scarborough, Old Orchard Beach, South Portland, Gorham, and Saco that are within the watershed of the tidal and freshwater segments of the Scarboro River inland from its junction with Saco Bay at Pine Point plus all its tributaries including, but not limited to, the Nonesuch River, the Libby River, and Jones Creek.

New Meadows River (Excluding waters west of Gurnet Strait and Rte. 24)

The sections of Phippsburg, Harpswell, West Bath, Bath and Brunswick within the watershed of the tidal and freshwater segments of the New Meadows River inland from its junction with Casco Bay at Fort Point plus all its tributaries, but excluding the tidal waters that lie west of the Rte. 24 Bridge at Gurnet Strait.

Medomak River (Segment)

The section of Waldoboro that is within the watershed of the tidal and freshwater segments of the Medomak River and its tributaries, inland of a line between the northern end of Jones Neck and Havener Point and south of Winslows Mills.

St. George River (Segment)

The sections of Cushing, St. George, South Thomaston, Thomaston, Rockland, and Warren, that are within the watershed of the tidal and freshwater segments of the St. George River inland of a line connecting Bailey Point in Cushing to Watts Point in St. George and downstream of the outlets of south pond, White Oak Pond, and Chickawaukie Lake plus all the St. George River's tributaries within this area including, but not limited to, the Oyster River and Mill Creek.

Weskeag River (All)

The sections of South Thomaston, Owls Head, Thomaston, and Rockland that are within the watershed of the tidal and freshwater segments of the Weskeag River inland from its confluence with Penobscot Bay at Spaulding Island plus all the Weskeag's tributaries.